

CHATHAM COUNTY ATTORNEY

R. JONATHAN HART
COUNTY ATTORNEY
rjhart@chathamcounty.org

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ANDRE PRETORIUS
ASSISTANT COUNTY ATTORNEY
anpretorius@chathamcounty.org

December 12, 2022

Via Email
Molly Davenport
Courtroom Deputy Clerk
To the Honorable Christopher L. Ray
United States Magistrate Judge
Southern District of Georgia

RE: Hodges, et. Al. v. Chatham County, Georgia, et. Al. – CAFN 4:22cv67
United States District Court for the Southern District of Georgia

Dear Ms. Davenport,

Attached is the correspondence to you for Judge Ray's consideration in advance of the discovery conference tomorrow. I am also attaching a copy of the privilege log sent to Plaintiff's counsel.

Thank you for your assistance.

Sincerely,



R. Jonathan Hart, County Attorney

Enclosures

Cc: Carlton Joyce
David Utter
Will Claiborne
Christopher Murell
Ben Perkins
Will Phillips
Gary McGinty

Andre Pretorius

From: Andre Pretorius
Sent: Wednesday, December 7, 2022 3:08 PM
To: David Utter
Cc: Will Claiborne; Christopher Murell
Subject: RE: Jessica Hodges (Creely) FRCP Rule 37 confer

Thanks, confirmed

From: David Utter <david@claibornefirm.com>
Sent: Wednesday, December 7, 2022 1:14 PM
To: Andre Pretorius <anpretorius@chathamcounty.org>
Cc: Will Claiborne <will@claibornefirm.com>; Christopher Murell <chris@murell.law>
Subject: Jessica Hodges (Creely) FRCP Rule 37 confer

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Andre,

I write to confirm our meeting today to discuss our discovery disputes. We discussed and agreed to the following:

1. Plaintiffs' 1st RPD #21: I noted that our request includes any documents related and produced by Community Oriented Correctional Health Services (COCHS) and Drs. Ray and Shansky ("Dr. Ray"), including the county's contracts with them. You objected based on attorney-work product, arguing that the contracts for COCHS and Dr. Ray are with the county attorney's office and that your client entered into them to help the county avoid litigation.
2. I added the contract and work performed by Dr. Ray to Plaintiff's request for a 30(b)(6), which now requests that you designate a witness and provide the contracts and budgets for the following:
 - A. Budget preparation, including funding and staffing levels, for the provision of health care for detainees at the Chatham County Detention Center ("CCDC") for the years 2016-2020;
 - B. Contract negotiations and budget preparation, including staffing levels, for the contracts with CorrectHealth Chatham and/or CorrectHealth for the provision of health care for detainees at CCDC for 2016-2020;
 - C. Contract negotiations and budget preparation, including staffing levels, for the contract(s) with Community Oriented Correctional Health Services;
 - D. The decision to terminate the contract with Corizon;
 - E. The county's oversight and monitoring methods, including staffing of its oversight and monitoring methods, of its contracts with Corizon and CorrectHealth and/or CorrectHealth, Chatham to ensure compliance with contract requirements and adherence to the requests for proposals that led to the contracts; and
 - F. Contract negotiations and budget preparations, including staffing levels, for the contract(s) with Dr. Kenneth Ray.

You objected to C and F based on attorney-work product, arguing that the contracts for COCHS and Dr. Ray are with the county attorney's office and that your client entered into them to help the county avoid litigation.

We agreed that 1) the county would produce a privilege log and 2) Plaintiffs will file a motion to compel.

3. You noted the county's objections to Plaintiffs deposing Dr. Ray about he and Dr. Shansky's work, based on attorney-work product, arguing that the work they are on behalf of the county attorney's office and that your client entered into them to help the county avoid litigation. **We agreed that the county will file a motion to quash the subpoena.**

Let me know if I missed anything and thanks again for meeting.

David

David J. Utter, Esq.
The Claiborne Firm, P.C.
410 E. Bay Street
Savannah, GA 31401
(912) 236-9559
david@claibornefirm.com

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From: David Utter

Sent: Friday, November 18, 2022 12:51 PM

To: Donna Myers <DKMyers@chathamcounty.org>; Andre Pretorius <anpretorius@chathamcounty.org>

Cc: Kristin M. Douglas <kmdouglas@bouhan.com>; Gary McGinty <gmcginty@bouhan.com>; Lighthiser, Mary Ellen <mlighthiser@SWFLLP.com>; CARLTON E. JOYCE <CEJOYCE@bouhan.com>; 'Ben Perkins' <bperkins@olivermaner.com>; Jaylen Katzman <jatzman@bouhan.com>; Will Claiborne <will@claibornefirm.com>; 'Christopher Murell' <chris@murell.law>; 'Deb Grondziak' <dgrondziak@olivermaner.com>; 'Will Phillips' <wphillips@olivermaner.com>; Sherri Oliver <soliver@chathamcounty.org>; Flint, Michael <mflint@SWFLLP.com>; Clark, Jimasha <jclark@SWFLLP.com>; Kim Griffin <Kim@claibornefirm.com>

Subject: RE: Jessica Hodges (Creely)

Sorry for the delay Donna. Plaintiff is available on the following dates in December:

Dec 1, 2, 5 (afternoon only), 6-7, 12-13, 14 (afternoon only), 15-16

In addition, please check in on the availability for the following county/sheriff staff and an expected length:

Sheriff Wilcher—no longer than 1 hour
Dep. Gardner—2 hours

Dep. Coleman—2 hours
Dep. Gibson—2 hours
Dep. Brown—2 hours
Dep. Reid—2 hours

Finally, please let us know when the county can sit for a 30(b)(6) deposition. The topic areas are:

1. Budget preparation, including funding and staffing levels, for the provision of health care for detainees at the Chatham County Detention Center (“CCDC”) for the years 2016-2020;
2. Contract negotiations and budget preparation, including staffing levels, for the contracts with CorrectHealth Chatham and/or CorrectHealth for the provision of health care for detainees at CCDC for 2016-2020;
3. Contract negotiations and budget preparation, including staffing levels, for the contract(s) with Community Oriented Correctional Health Services;
4. The decision to terminate the contract with Corizon; and,
5. The county’s oversight and monitoring methods, including staffing of its oversight and monitoring methods, of its contracts with Corizon and CorrectHealth and/or CorrectHealth, Chatham to ensure compliance with contract requirements and adherence to the requests for proposals that led to the contracts.

David

David J. Utter, Esq.
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david@claibornefirm.com

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From: Donna Myers <DKMyers@chathamcounty.org>

Sent: Wednesday, November 9, 2022 9:42 AM

To: David Utter <david@claibornefirm.com>; Andre Pretorius <anpretorius@chathamcounty.org>

Cc: Kristin M. Douglas <kmdouglas@bouhan.com>; Gary McGinty <gmcginty@bouhan.com>; Lighthiser, Mary Ellen <mlighthiser@SWFLLP.com>; CARLTON E. JOYCE <CEJOYCE@bouhan.com>; 'Ben Perkins' <bperkins@olivermaner.com>; Jaylen Katzman <jkatzman@bouhan.com>; Will Claiborne <will@claibornefirm.com>; 'Christopher Murell' <chris@murell.law>; 'Deb Grondziak' <dgrondziak@olivermaner.com>; 'Will Phillips' <wphillips@olivermaner.com>; Sherri Oliver <sloliver@chathamcounty.org>; Flint, Michael <mflint@SWFLLP.com>; Clark, Jimasha

<jclark@SWFLLP.com>; Kim Griffin <Kim@claibornefirm.com>

Subject: RE: Jessica Hodges (Creely)

None of those dates work for us. The month of November is pretty booked. Can you provide me with some dates in December?

Donna K. Myers, CP
Certified Paralegal
Chatham County Attorney's Office
124 Bull St., Room 230
Savannah, GA 31401
Telephone: (912) 652-7881
Fax: (912) 652-7887

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From: David Utter <david@claibornefirm.com>

Sent: Friday, November 04, 2022 3:15 PM

To: Andre Pretorius <anpretorius@chathamcounty.org>; Jonathan Hart <RJHart@chathamcounty.org>

Cc: Kristin M. Douglas <kmdouglas@bouhan.com>; Gary McGinty <gmcginty@bouhan.com>; Lighthiser, Mary Ellen <mlighthiser@SWFLLP.com>; CARLTON E. JOYCE <CEJOYCE@bouhan.com>; 'Ben Perkins' <bperkins@olivermaner.com>; Jaylen Katzman <jkatzman@bouhan.com>; Will Claiborne <will@claibornefirm.com>; 'Christopher Murell' <chris@murell.law>; 'Deb Grondziak' <dgrondziak@olivermaner.com>; 'Will Phillips' <wphillips@olivermaner.com>; Sherri Oliver <soliver@chathamcounty.org>; Flint, Michael <mflint@SWFLLP.com>; Clark, Jimasha <jclark@SWFLLP.com>; Kim Griffin <kim@claibornefirm.com>; Donna Myers <DKMyers@chathamcounty.org>

Subject: Jessica Hodges (Creely)

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Dear Andre and Jon,

Can you please give us some dates to depose Lt. Tanya Jacques? Plaintiffs are available on Nov. 10 from 1-5 pm, and all day on 11/11, 11/14, and 11/18.

Thank you,

David

David J. Utter, Esq.
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William R. Claiborne (GA)

writer's email: david@claibornefirm.com

David J. Utter (GA, FL & LA)

Casey L. Redwine (GA & NY)

Scott C. Robichaux (GA) (*of counsel*)

October 18, 2022

Via Electronic Mail Only

rjhart@chathamcounty.org

anpretorius@chathamcounty.org

R. Jonathan Hart

Andre Pretorius

Chatham County Attorney's Office

P.O. Box 8161

Savannah, GA 31412

Re: **Jessica Hodges, et al. v. Chatham County, Georgia, et al.**

Case Number: 4:22-cv-00067-WTM-CLR

United States District Court, Southern District

Dear Jon and Andre:

Plaintiffs request that the parties confer regarding your offer to produce "any non-privileged documents" related to detainee deaths at the Chatham County Detention Center. This request is made pursuant to local rule 26.5, reminding counsel that "Fed. R. Civ. P. 26(c) and 37(a)(1) require a party seeking a protective order or moving to compel discovery to certify that a good faith effort has been made to resolve the dispute before coming to court." Plaintiffs agree to narrow their request for documents sought in our First Set of Requests for Production of Documents, No. 12, to the following:

Any administrative review, mortality or morbidity investigation or review, psychological autopsy, or similar, relating to any detainee death from January 1, 2017 through December 31, 2020.

The law is clear that you have no privilege claims protecting the documents requested. *See, e.g., Colardo-Keen v. Rockdale County, Georgia*, 2017 WL 4418669, Civil Action No. 1:14-CV-489 (N.D. Ga. Mar. 3, 2017) (mortality review discoverable in wrongful death lawsuit). As noted by the court in *Jenkins v. DeKalb Cty. Ga.*, 242 F.R.D. 652, 659 (N.D. Ga. 2007) "[i]t appears that every United States Court of Appeals that has addressed the issue of whether there is a federal medical peer review privilege has rejected the claim." In addition, the mere fact that the county's lawyers were consulted as part of its retention of Kenneth Ray and Ronald Shansky does not make any documents they created protected by the attorney-client privilege. *Colardo-Keen v. Rockdale County, Georgia*, 2017 WL 4418669, *2. Finally, given that the documents requested were not

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R. Jonathan Hart

Andre Pretorius

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P.O. Box 8161

Savannah, GA 31412

Re: **Jessica Hodges, et al. v. Chatham County, Georgia, et al.**

Case Number: 4:22-cv-00067-WTM-CLR

United States District Court, Southern District

Page 2 of 2

October 18, 2022

created with "the primary purpose of providing advice related to litigation" the documents are not protected by the work-product privilege. *Id.* at *3.

Please let us know when you can confer.

Sincerely,

THE CLAIBORNE FIRM, P.C.



DAVID J. UTTER

Attorney for the Firm

DJU/kag

Exhibit C

Chatham County Privilege Log

December 12, 2022

#	Document Description	Document Type	Author	Recipient	Date	Privilege Claimed
1	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	08/14/2018	Attorney-Client Privilege
2	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart		Attorney-Client Privilege
3	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	11/28/2018	Attorney-Client Privilege
4	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	02/03/2019	Attorney-Client Privilege
5	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	04/30/2019	Attorney-Client Privilege
6	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	07/05/2019	Attorney-Client Privilege
7	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	08/21/2019	Attorney-Client Privilege
8	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	10/27/2019	Attorney-Client Privilege
9	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	12/29/2019	Attorney-Client Privilege
10	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	03/04/2020	Attorney-Client Privilege
11	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart		Attorney-Client Privilege
12	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	06/28/2020	Attorney-Client Privilege
13	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	09/21/2020	Attorney-Client Privilege
14	Inmate Health Compliance Monitoring Report	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	09/21/2020	Attorney-Client Privilege

15	Inmate Health Compliance Monitoring Report	Report	COCHS	R. Jonathan Hart	02/03/2017	Attorney-Client Privilege
16	Inmate Health Compliance Monitoring Report	Report	COCHS	R. Jonathan Hart	02/20/2017	Attorney-Client Privilege
17	Inmate Health Compliance Monitoring Report	Report	COCHS	R. Jonathan Hart	03/28/2017	Attorney-Client Privilege
18	Inmate Health Compliance Monitoring Report	Report	COCHS	R. Jonathan Hart	04/12/2017	Attorney-Client Privilege
19	Inmate Health Compliance Monitoring Report	Report	COCHS	R. Jonathan Hart	07/05/2017	Attorney-Client Privilege
20	Inmate Health Compliance Monitoring Report	Report	COCHS	R. Jonathan Hart	08/30/2017	Attorney-Client Privilege

Chatham County Privilege Log

December 12, 2022

#	Document Description	Document Type	Author	Recipient	Date	Privilege Claimed
1	Inmate Mortality Chart	Report	Dr. Kenneth A. Ray	R. Jonathan Hart	07/20/2019	Attorney-Client Privilege
2	Inmate Mortality Chart	Report	Dr. Kenneth A. Ray	R. Jonathan Hart		Attorney-Client Privilege
3	Any all unknown inmate mortality Charts not in the County Attorney's Office Possession at this time					